IN THE HIGH COURT OF UTTARANCHAL AT Nainital

Chapter VIII, Rule 32(2) (b)
Description of case

Criminal Appeal No. 1689 of 2001
(Old No. 1657/1997)

Date of decision: 16th August, 2004

For the approval of:

Hon'ble Chief Justice V.S. Sirpurkar.

Hon'ble Mr. Justice J .C.S. Rawat.

- Whether the order/judgment should be sent to The reporters for reporting? ( )

- Whether the reporters be allowed to see the Judgment? ( )

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IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Crl. Appeal No. 1689 of 2001
(Old No. 1657/1997)

Idrish, S/o Rashid,
R/o Village Patti Sultanpur,
Police Station Bajpur,
District Udham Singh Nagar. ---------- Appellant

Versus

State ---------- Opposite Party

Mr. R.S. Sammal, learned Amicus Curiae for the appellant.
Mr. D.K. Sharma, learned government Advocate for the State.

Coram: Hon'ble V.S. Sirpurkar, C.J.,
Hon'ble J.C. S. Rawat, J .

Date: 16th August, 2004

(Per Hon'ble the Chief Justice)

1. This is a criminal appeal by the accused Idrish, who has been Convicted for an offence of murder on the allegation that on 30.6.1995 at about 6:30 p.m., he committed the murder of one Inderjeet by inflicting blows by a *"Patal"* (country made sword) near the tube well at Police Station Kashipur.

2. The prosecution story was that the deceased Inderjeet as also the accused Idrish were working in the farm known as Sharma Farm and on 28.6.1995, while the deceased Inderjeet was taking rest near the tube well, the accused Idrish was shouting for flying-away the birds, which come in the field. Inderjeet asked him not to shout because it was disturbing him and at that point of time, there was an oral altercation between the two. The prosecution pleaded that on account of this, the accused Idrish took this to be him insult and started bearing grudge against the deceased Inderjeet. The deceased Inderjeet, along with his brother Ranjeet (PW1) and Uncle Nikuj Das (PW2), used to reside in the same farm only along with the other labourers. On 30.6.1995 at about 6:30 p.m. when the deceased Inderjeet was busy in cooking, the accused Idrish came there and gave two blows with the *Patal* on his neck resulting in serious injuries and

the instantaneous death of the deceased Inderjeet on the spot. The prosecution pleaded that the witnesses Ranjeet (PW1) and Nikunj Das (PW2) tried to follow the accused Idrish, however, the accused Idrish threatened them of dire consequences by showing them the *Patal*, on account of which, Ranjeet (PW1) and Nikunj Das (PW2) could not do anything.

3. The matter was reported at about 8:30 p.m. on the same day in the I.T.I. Police Outpost of Kashipur Police Station by Ranjeet (PW1). The crime was registered and the police party attended the spot. The spot is about 5 Kms. away from the said Police Outpost. Because of the darkness, the police did not conduct the Inquest – Panchnama at night, though the police had reached the spot. The said Inquest – Panchnama was conducted on the next day i.e. on 1.07.1995. Thereafter, the dead body of the deceased Inderjeet was seized and was sent for post mortem. The post mortem was conducted on 1.07.1995, itself, by Dr. Surendra Singh (PW4.) Ion the post mortem, the doctor found two external injuries on the body of the deceased. They were:

i. Incised wound 13 c.m. x 5 c.m. bone deep, 4 c.m. below the chin in front of the upper part of the neck. Trachea, Oesophagus and major vessels of the neck as also both the Carotids cut through and through.

ii. Incised wound 12 c.m. x 2.5 c.m. muscle deep, 5 c.m. below the injury No. 1 in front of the upper part of the chest.

4. The Investigation Officer arrested the accused Idrish on 2.7.1995 from one garden, where the accused Idreish had hidden himself. On his apprehension, the accused Idrish agreed to take out the murderous weapon i.e. *Patal* and took the police party to a place, a little distance away from the spot of the incident an discovered the *Patal,* which was hidden under ht limbs and twigs. The investigation was complete and a charge-sheet was filed against the accused Idrish.

5. Before the Sessions Judge, the accused Idrish abjured his guilt. In support of their case, the prosecution have examined, in all, 5 witnesses. Ranjeet (PW1) and Nikunj Das (PW2), the real brother and uncle of the deceased Inderjeet, were presented as eye-witnesses while Constable Rajendra Singh (PW3) and Jai Prakash (PW5) are the police witnesses. Dr. Surendra Kumar (PW4) conducted the post mortem of the dead body.

6. Before the Trial Court, the defence of the accused Idrish was that he has been falsely implicated. He accepted that he used to go on the farm as a labour, but he completely denied the knowing of Ranjeet (PW1), Nikunj Das (PW2) and the deceased Inderjeet. In short, the defence of the accused Idrish is that of denial. The defence did not prevail and the Sessions Judge accepted the prosecution's case and convicted the accused Idrish for the offence under Section 302 I.P.C. and awarded rigorous imprisonment for life along with a fine of Rs. 1,000/-, in default of which, he was to suffer further rigorous imprisonment for one month. It is, against this verdict, that the accused Idrish comes before us by way of this appeal.

7. Mr. R.S. Sammal, learned Amicus Curiae appointed by the Court, very vehemently argues that this was a case entirely dependent upon the interested witnesses like the real brother and the real uncle and that the said oral testimony did not have the necessary corroboration. Learned counsel also points out that the investigation in this case was slipshod and almost in the nature, which could be describe as the casual investigation, in as much as, even the blood stained cloths of he deceased Inderjeet were not seized nor was the said *Patal,* which was alleged to have been discovered by the accused, sent to the chemical analyser. Learned counsel points out that there was every possibility of the First Information Report being anti-timed because, according to the learned counsel, if the incident took place at 6:30 p.m., the First Information Report, which was registered at about 8:30 p.m., would be actually beyond the expected time. Learned counsel, further, alleged that the nature of the offence could not be

that under Section 302 I.P.C. as it was not covered by Section 300 I.P.C. Learned counsel, therefore, urged that this was, at the most, a case for an offence under Section 304 (II) I.P.C. and the accused Idrish was liable to be shown some leniency in this behalf. Beside this, learned counsel also urged about the young age of the accused Idrish.

8. As against this, Mr. D.K. Sharma, Government Advocate very strongly supported the conviction. The public prosecutor points out that the witnesses were extremely natural and could not be said to be entirely interested. The only test that according to the public prosecutor, which was liable to be applied for appreciating the evidence is that the court should keep in its mind the fact that the witnesses were interested. Learned counsel, further points out that the Sessions Judge, who has convicted the accused Idrish seems to have kept this principle in mind and has rightly accepted the testimony of the eye-witnesses. The public prosecutor, very fairly conceded that the investigation was wanting in some avenues and could have been done in a better fashion. However, according to the public prosecutor, the defects in the investigation, did not shake the prosecution's case at all.

9. On these conflicting submissions before us, we have to consider as to whether an offence of murder has been brought to home.

10. The prosecution has examined Ranjeet (PW1) as a star witness. He is the one, who is the real brother of the deceased Indrjeet. He, in his evidence, has supported the altercation, which took place on 28.6.1995 between the accused Idrish and the deceased Inderjeet. He has also pointed out that, that was only an oral altercation on account of which, the accused Idrish started bearing some ill-will against the deceased Inderjeet. As regards the incident, he saw that while he was coming from his residence in the farm to fetch water, he saw that his brother Inderjeet was making preparations for cooking and was busy in grinding some condiments. He also makes a reference to the

presence of Nikunj Das (PW2), who was allegedly taking rest under the nearby tree. He, then, deposed that the accused Idrish came from behind with a *Patal* and dealt a blow on the neck of the deceased Inderjeet. On this, the deceased Inderjeet fell down and the accused Idrish started taking to his heels. He also asserts that when he and his uncle, who also had seen the incident tried to follow the accused Idrish, the accused threatened that they would meet the same fate. On this, the said eye-witnesses lost their nerves and did not follow the accused Idrish. Ranjeet (PW1), then speaks about his having gone to the Police station and lodging the First Information Report. He is also a witness on the inquest – Panchnama, which took place on the next date i.e. on 1.7.1995.

11. Learned counsel for the accused very heavily assailed the evidence of this witness suggesting that he was interested witness. We have gone through the cross-examination of this witness and, in reality, nothing has been brought in the cross-examination, which would put us on guard against the acceptance of the evidence of this witness. We are quite aware that he was the real brother of the deceased Indrejeet, but, then he would also not go to the extent of implicating somebody falsely merely because there was an oral altercation between the accused Idrish and the deceased Inderjeet. In so far as the earlier oral altercation is concerned, there is hardly any challenge to the story. We find absolutely no cross-examination on that aspect. Therefore, we can safely accept that there was actually an oral altercation in between the accused Idrish and the deceased Inderjeet on 28.6.1995. In so far as the main incident is concerned, the witness has correctly stated that the accused Idrish came back from behind and at that time, the deceased Inderjeet was busy in grinding condiments and making preparations for cooking the dinner. In so far as the main incident is concerned also, there is hardly any cross-examination worth in. We are not impressed by the defence contention that the First Information Report is deliberately made late and in fact, nobody knew, at the time when the inquest was prepared,

as to the name of the real assailant. Learned counsel tried to take us through the inquest Panchanma to suggest that there was a possibility of the Panchas not knowing the name. It is not necessary to put the name of the accused in the inquest Panchnama. We hardly have any doubt that the First Information Report was lodged on 30.6.1995 because we have the supporting evidence of Jai Prakash (PW5) in support of that. Learned counsel for the accused tried to take support of the fact that there was no entry made in the Police Station's dairy of the visit by the Investigation Officer. We do not think that circumstance, by itself, would make the whole First Information Report a suspected document. This is besides the point that the First Information Report was lodged barely within 2 hours of he incident naming the accused as also the witnesses therein. We have seen the First Information Report, wherein all the necessary facts have been stated and we do not think that there was any opportunity for the prosecution to either anti-time the said First Information Report.

12. The witness was asked about his earlier statement that he along with his Mama were sitting hear the pathway. The witness has denies to have stated this. He was also asked about the insignificant omission to the effect that by the time he and his maternal Uncle rose up, the accused Idrish had run away. We are not impressed by the so called contradictions and omissions, which do not shake the testimony of the witness at all. On the other hand, the witness was firm enough to assert that while he and his maternal Uncle were on the Northern side, the accused Idrish had come from the Southern side and had assaulted the deceased Inderjeet. Very significantly, even about the threat given by the accused Idrish, there is not even a suggestion put to this witness or to Nikunj Das (PW2).

13. This witness is completely supported by the evidence of Nikunj Das (PW2), who was, in fact, a witness taking rest under the tree, which was hardly about 10 paces away form the spot, where the deceased Inderjeet was assaulted by the accused Idrish. This witness was clear enough to suggest that two blows were given, though he

said that those blows were given when the accused Idrish was behind the deceased Indrjeet. That would be quite natural. Again, there is hardly any cross-examination on the main aspect of the assault. The presence of this witness was very natural. He was hardly 10 paces away from the deceased Inderjeet when he was attacked by the accused Idrish. It has come in his cross-examination that the house, in which the labourers used to live was hardly 7 or 8 paces away from the tube well, which would give credence even to the evidence of Ranjeet (PW1) and would suggest that Ranjeet (PW1), who was coming from the house at the time of assault, would have a full opportunity to see the incident. He explained that on the day of incident, he was not well and therefore, he was sitting under the tree and was under that tree particularly for the whole day. Besides, a suggestion that the accused Idrish had not committed the murder, there is practically nothing in the evidence of this witness and we are satisfied that both the witnesses have stated the truth. It is true that both the witnesses were related to the deceased Inderjeet, but we, then , have to take into consideration the anxiety on their part to see that the real assailant does not slip away without being punished by law.

14. We are not impressed, at all, by the so called discovery, which was tried to be proved by the Constable Rajendra Singh (PW3) and which was also supported by the witness Jai Prakash (PW5). In the first place, that discovery appears to have been made from the open place, which would immediately put us on guard against the acceptance of the discovery. This is apart form the fact that for the reasons best known to Jai Prakash (PW5), he did not choose to send the said *Patal* or the cloths to the chemical analyser. We are expressing our dis-satisfaction over the casual manner in which the investigation has been conducted, but for the evidence of these two eye-witnesses, who stood their test of cross-examination satisfactorily, it would have been a field day for the assailant.

15. Dr. Surendra Singh (PW4) has described the injuries, which we have noted above. The injuries show that the Carotid vessels, Trachea as also the Oesophagus were cut through and through. That shows the force with which the blows were given. The blow was, undoubtedly, given on the vital part of the deceased Inderjeet and thereafter also, the accused Idrish did not stop and assailed the second blow on the body of the deceased. The size of the injuries, itself, suggests that the intention on the part of the accused Idrish was only to commit such injuries as would be covered in thirdly of Section 300 I.P.C.

16. We are, therefore, completely convinced that the accused Idrish was rightly convicted by the Trial Court and he was also rightly convicted for the offence of murder. We are, therefore, convinced that the appeal has no merits. The appeal must be dismissed and it is dismissed. However, we are thankful to the Amicus Curiae for the invaluable assistance that he has rendered in disposal of this matter.

(J.C.S. Rawat, J.) **(V.S. Sirpurkar, C.J.)**

Dt.: 16.08.2004
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